

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IN THE MATTER OF THE
APPLICATION FOR AUTHORIZATION
TO SEARCH: Two cell phones seized
from Dana Faulkner, as described in
Attachment A

5:17-MJ-150

AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
SEARCH WARRANT

STATE OF SOUTH DAKOTA)
)
COUNTY OF PENNINGTON)

1. I, Joseph Korth, having been sworn, do hereby state as follows:

I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and has been so employed since 2013. I am currently assigned to the Rapid City ATF office, where it is my responsibility to investigate firearm-related offenses, which includes the use, transportation, distribution, and manufacture of controlled substances. Prior to becoming a Special Agent, I was a Federal Air Marshal from September 2007 to July 2013. During my tenure as a Special Agent I have been involved in numerous firearm and drug investigations. I have also interviewed drug users and dealers regarding the manner in which they conduct business and have become familiar with their techniques.

Based upon my training and experience, including my direct experience in this investigation, I know:

- a) That drug traffickers often maintain, on hand, large amounts of cash (U.S. currency) in order to finance their drug distribution activities;
- b) That it is common for drug traffickers to secrete contraband, proceeds of drug sales, and records of drug transactions in secure locations within their residences, business and vehicles to conceal them from law enforcement.
- c) That drug traffickers commonly maintain addresses or telephone

numbers in books, documents and electronic devices that have memory which include computer hard drives, cellular phones, Global Positioning Systems which reflect names, addresses and telephone numbers of the associates in the trafficking organization.

d) I also know that individuals involved in the distribution of controlled substances and their associates correspond and communicate using internet email, cellular phone text messages and that their computers and/or other electronic storage media in their possession may be used to prepare, create, and maintain writings, records, and documents relating to their activities and associations, including but not limited to the trafficking of controlled substances.

e) Through my own experience and training, I am aware that it is common for narcotics traffickers to utilize cellular telephones to facilitate their drug trafficking activities. I am also aware that in addition to using the telephones for communication purposes, said traffickers may also use the internal memory ("phone book" functions) of the telephone to store names and contact telephone numbers of individuals involved in said drug-trafficking enterprises, and that certain models of cellular telephone also maintain limited logs of past calls made by that telephone.

f) I am also aware that more people, including drug traffickers are utilizing "Smart" phones, such as Apple iPhones, and GPS units for travel directions. These GPS units can be standalone devices manufactured for that single purpose or applications used through cellular phones. Many of the "Smart" phones and GPS units are programmed with addresses from around the United States and all a user has to do is enter the address he/she wants to travel to and the "Smart" phones and GPS units will provide a travel route for the user. Besides providing a travel route for the user most of the "Smart phones" and GPS units also automatically keep track of the route the user has taken and will back track the route to the point of origin.

g) That drug traffickers take or cause to be taken photographs and videos of themselves, their associates, their assets and their product. That these traffickers usually maintain these photographs and videos in their possession, or within their residences, computers, cellular phones, vehicles, and/or other locations over which they maintain dominion and control;

h) That it is generally a common practice for drug traffickers to maintain in their residences and/or other locations over which they maintain dominion and control records relating to their drug trafficking activities. Because drug traffickers in many instances will "front" (that is, sell on consignment) controlled substances to their clients, or alternatively, will be "fronted" controlled substances from their suppliers, such record-keeping is necessary to keep track of amounts paid and owed, and such records will also be maintained close at hand so as to readily ascertain current balances. Often drug traffickers keep "pay and owe" records (drug ledgers) to show balances due for drugs sold in the past ("pay"), and for payments expected ("owe") as to the trafficker's supplier and the trafficker's dealer(s). Additionally, drug traffickers must maintain telephone and address listings of clients and suppliers, and keep them immediately available in order to efficiently conduct their drug trafficking business. Such records can be maintained on cellular phones.

i) That it is a generally common practice for drug traffickers to make use of wire transfers, cashier's checks, and money orders to pay for expenses associated with services to facilitate their illegal activities. Evidence of such financial transactions and records relating to income and expenditures of money and wealth in connection with drug trafficking would also typically be maintained in a trafficker's residence and/or other locations over which they maintain dominion and control, including cellular phones.

j) I am also aware that a Subscriber Identity Module ("SIM") card is a portable memory chip predominantly used in cellular phones that hold information regarding the cell phone's number, address, book, text messages,

and other data. SIM cards can typically be removed from a phone and placed in another phone, retaining its original data. SIM cards usually have a unique number associated with it so that it can be associated with a particular cell phone service provider.

TECHNICAL TERMS

2. Based on my training and experience, I use the following technical terms to convey the following meanings:

- a. Wireless telephone: A wireless telephone (or mobile telephone, or cellular telephone) is a handheld wireless device used for voice and data communication through radio signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Wireless telephones may also include global positioning system ("GPS") technology for determining the location of the device.
- b. Digital camera: A digital camera is a camera that records pictures as digital picture files, rather than by using photographic film. Digital cameras use a variety of fixed and removable storage media to store their recorded images. Images can usually be retrieved by connecting the camera to a computer or by connecting the

removable storage medium to a separate reader. Removable storage media include various types of flash memory cards or miniature hard drives. Most digital cameras also include a screen for viewing the stored images. This storage media can contain any digital data, including data unrelated to photographs or videos.

- c. Portable media player: A portable media player (or "MP3 Player" or iPod) is a handheld digital storage device designed primarily to store and play audio, video, or photographic files. However, a portable media player can also store other digital data. Some portable media players can use removable storage media. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can also store any digital data. Depending on the model, a portable media player may have the ability to store very large amounts of electronic data and may offer additional features such as a calendar, contact list, clock, or games.

3. Based on my training, experience, and research I know that the two cellular phones described in Attachment A, which were seized from Dana Faulkner (hereinafter referred to as "DEVICES") have capabilities that allow them to serve as a wireless telephone, as well as possibly a digital camera with photographs and video, and a portable media player of video and music. In my training and experience, examining data stored on devices of this type can uncover, among other things, evidence that reveals or suggests who possessed or used the DEVICES.

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

4. Based on my knowledge, training, and experience, I know that electronic devices can store information for long periods of time. This information can sometimes be recovered with forensics tools.

5. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how each of the DEVICES was used, the purpose of its use, who used it, and when. There is probable cause to believe that this forensic electronic evidence might be on the DEVICES because:

- a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file).
- b. Forensic evidence on a device can also indicate who has used or controlled the device. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence.
- c. A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.
- d. The process of identifying the exact electronically stored information on storage medium that are necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.
- e. Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to

establish that a particular thing is not present on a storage medium.

6. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit the examination of the DEVICES consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the devices to human inspection in order to determine whether it is evidence described by the warrant.

7. *Manner of execution.* Because this warrant seeks only permission to examine DEVICES already in law enforcement's possession, the execution of this warrant does not involve the physical intrusion onto a premises. Consequently, I submit there is reasonable cause for the Court to authorize execution of the warrant at any time in the day or night.

SCOPE OF REQUEST

8. I submit this affidavit in support of an application for a warrant pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. 2703(c)(1)(A), authorizing federal and state law enforcement officers to search the cell phones and devices found on the person of Dana Faulkner and in a vehicle being operated by Faulkner, specifically the DEVICES described Attachment A, and believed to hold evidence of violations of 18 U.S.C. §§ 922(g)(1) and 924(c) and 21 U.S.C. §§ 841(a) and 846.

9. I have personally participated in the investigation set forth below. I am familiar with the facts and circumstances of the investigation through my personal participation, from discussions with other law enforcement, from my discussions with witnesses, and from my review of records and reports relating to the investigation. Because this affidavit is being submitted for the limited purpose of securing an order authorizing the search of the DEVICES for the

information listed in Attachment B, I have not included details of every aspect of the investigation.

10. I respectfully submit that probable cause exists to believe that the search of the DEVICES for the information listed in Attachment B will constitute or lead to evidence of offenses involving drug trafficking, particularly violations of 18 U.S.C. § 922(g)(1) and 924(c), 21 U.S.C. §§ 841(a)(1) and 846, hereinafter the TARGET OFFENSES, as well as the identification of individuals who are engaged in the commission of these offenses.

PROBABLE CAUSE

11. On 6/28/17, Daniel Richards informed law enforcement that his drug supplier goes by "Kidd". Richards described "Kidd's" boss as being named "Diablo". "Diablo" showed up at Richards' residence with a gun and said that Richards' was being held responsible to "Diablo" for a \$25,000 drug debt. Richards denied owing "Diablo" \$25,000 and believed it was from either a drug deal gone bad or a seizure of drugs by law enforcement.

12. Richards explained a few days before the interview he was at Nick Perry's residence. Perry requested Richards' help to pick up a car in Meade County. Richards agreed to help. Once Perry and Richards arrived, Perry stopped on a dirt road where there was another car. Richards saw "Diablo" in the car, was fearful of "Diablo", exited Perry's car, and fled to avoid "Diablo." Richards turned himself in to law enforcement.

13. Richards went on to tell law enforcement that prior to going to Meade County with Perry, Richards had met with "Diablo" at Watiki Water Park in Rapid City and picked up and sold one pound of methamphetamine for "Diablo". Richards understood this arrangement was payment for the debt "Diablo" was holding Richards accountable for.

14. Richards also informed law enforcement that Doug Kindle sold multiple pounds of methamphetamine and heroin for "Diablo". Additionally, Richards informed law enforcement that Sebastian Hoff dealt multiple pounds of

methamphetamine for "Diablo". "Diablo's" practice is to bring heroin, methamphetamine, and cocaine in the tires of whatever vehicle he transports the dope in from Colorado to South Dakota. Once "Diablo" arrives in Rapid City, he goes to Sebastian's house and unloads the controlled substances. The substances are then further distributed from Hoff's house to others.

15. On 7/10/17, [REDACTED] had a heroin overdose. Drug paraphernalia was observed inside the residence by law enforcement upon responding to the scene. [REDACTED] later admitted to law enforcement officers that her husband Nicholas Perry gave her the heroin she used to overdose. No search warrant was conducted at that time.

16. On or about 8/2/17, Nick Perry informed law enforcement that for the last few weeks Perry was hanging out with Daniel Richards at Richards' residence. Doug Kindle contacted Perry and asked Perry to come to a hotel to meet Kindle. Perry agreed. Once Perry was in the room, "Diablo" came out of the back of the room. "Diablo" threatened Perry with a firearm and accused Perry of hiding Richards from him. Perry denied to "Diablo" that he was hiding Richards but "Diablo" then said Perry was now on the hook for the \$25,000 Richards owes "Diablo." "Diablo" threatened to kill Perry's wife and child if Perry did not cooperate. A few days later, Perry dropped Richards off where "Diablo" ask him to (in Meade County). This was confirmed by what Richards told law enforcement.

17. Perry said "Diablo" forced Perry to sell heroin, methamphetamine and cocaine for "Diablo" by threatening to kill his family if he did not cooperate. Perry also said that he has seen "Diablo" with a DEA badge and numerous firearms. PERRY said he was getting a half ounce of methamphetamine from "Diablo" every week. He said that he got a total of a half-pound of methamphetamine, a half-pound of heroin and a half ounce of cocaine from "Diablo" in the last five to six weeks. He said he is in debt to him for \$25,000. He said he had \$2,000 in cash in the hotel room to pay "Diablo". Perry does not know "Diablo's" name but did provide the following phone numbers Perry has

he has used to contact "Diablo": (605) 519-3326, (541) 969-5122, (605) 519-9576, (541) 246-7858 and (772) 774-6563.

18. On 8/2/17, Sebastian Hoff's vehicle was stopped by law enforcement. Inside, law enforcement located approximately \$16,000 cash, suspected methamphetamine, heroin, cocaine, a firearm, and a stolen Pennington County Deputy badge. Hoff told law enforcement that the money in the vehicle belonged to "Diablo". Hoff denied knowing "Diablo's" true identity. Hoff indicated he was carrying a firearm because he was fearful of "Diablo" and his threats of violence. Hoff stated the money in the car belonged to "Diablo" and eluded to it being drug money. When asked who was going to be responsible for the money being seized by law enforcement from the vehicle, Hoff started to cry and said "Diablo" would hold Hoff responsible for it. Hoff appeared to law enforcement to be genuinely scared of "Diablo".

19. On 8/7/17, Perry informed law enforcement that "Diablo" told him that "Diablo" was going to take three people out of the equation during the upcoming week. Perry did not know who the three people were and "Diablo" did not tell Perry the identities. Perry believes that "Diablo" meant he was going to kill people.

20. On 8/10/17, HOFF was interviewed by law enforcement. HOFF explained that he was in debt to "Diablo" for \$150,000 for illegal drugs he has received from "Diablo". HOFF advised he had received multiple pounds of methamphetamine from "Diablo" in prices ranging from \$12,000 to \$11,000 per pound. HOFF advised that he had received three pounds of methamphetamine at a time from "Diablo" on multiple occasions and on one occasion received ten (10) pounds.

21. On 8/21/17, law enforcement interviewed [REDACTED] stated she met "Diablo" through Daniel Richards in May 2017. [REDACTED] knew Richards to be receiving controlled substances from "Diablo" a few years prior. [REDACTED] recalled receiving seven ounces of methamphetamine, one ounce of heroin, and 3.5 grams of cocaine from "Diablo". [REDACTED] advised that during the first week

that "Diablo" was in town she helped move thirty (30) pounds of methamphetamine for "Diablo" with Sebastian Hoff, Daniel Richards, and Dough Kindle. ██████ advised that "Diablo" would bring 10 -20 pounds of methamphetamine to the Rapid City area one to three times per week. ██████ related she started a romantic relationship with "Diablo" shortly after meeting him and then would just help him set up with distribution in Rapid City prior to his arrival from Colorado rather than selling the drugs for him. ██████ stated "Diablo" always carries a handgun and is really wanting a suppressor because he wanted to use it to kill Nicholas Perry and Daniel Richards.

22. On 8/28/17, law enforcement received information that "Diablo" wanted to meet with the Perry to collect \$5,000 of an owed drug debt. Law enforcement advised Perry not to meet with "Diablo" as information was received that "Diablo" wished to kill him. A Confidential Informant (CI) provided the location of where "Diablo" wanted to meet and law enforcement set up surveillance at that location. The CI also provided a description of the vehicle "Diablo" was driving, which was a white colored BMW. A vehicle matching the description was observed by law enforcement. The operator of the vehicle also matched the description of "Diablo". Rapid City Police Department performed a traffic stop on the vehicle and the driver was taken into custody. The driver was identified as Dana Faulkner. A search of Faulkner revealed a Taurus .40 caliber pistol concealed on his person. An NCIC check of the firearm revealed it was stolen out of Rapid City. An inventory of the vehicle was conducted prior to towing as per Rapid City Police policy. During the inventory, a vap pen with a substance consistent with methamphetamine oil was located in the driver side door. Officers also located a backpack in the back seat that contained 2-4 grams of a substance that is consistent with methamphetamine and an extensive owe sheet related to drug distribution. Two cell phones were seized from Faulkner and are identified in Attachment A.

AUTHORIZATION REQUEST

23. Based on the foregoing, I respectfully submit there is probable cause to believe that the items listed in Attachment A may contain evidence of offenses in violation of 18 U.S.C. § 922(g)(1) and 924(c), and 21 U.S.C. §§ 841(a) and 846, committed by Faulkner.

24. WHEREFORE, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. 2703(c)(1)(A), it is requested that the Court issue a warrant and Order authorizing agents of the ATF and DCI to execute the requested warrant.

Respectfully submitted,



Joseph Korth
Special Agent
Bureau of Alcohol, Tobacco, Firearms
and Explosives

Subscribed and sworn to in person this 14th of September, 2017



DANETA WOLLMANN
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF SOUTH DAKOTA